fifth part of this estate demandable. I am clearly of opinion that the only way in which we can deal justly in this matter is to answer the questions as proposed by your Lordship.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties on the Special Case, are of opinion and find, that in paying the income of the trust estate and in handing over the furniture to the second party, the trustees, parties of the first part, have acted in conformity with the legal rights of parties, and that the parties of the third part have no title or interest to interfere with their management to this effect."

Counsel for First Parties — A. J. Young. Agents—Duncan & Black, W.S.

Counsel for Second Parties—J. A. Reid. Agent —Alexander Matheson, W.S.

Counsel for Third Parties — Macfarlane. Agents — Duncan, Archibald, & Cuningham, W.S.

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*Tuesday, July* 12.

## FIRST DIVISION.

[Sheriff-Substitute of Lanarkshire.

### ARROL *v.* TODD.

*Master and Servant—Contract—Damages for Wrongous Dismissal.*

George Todd, brickmaker, sued Wm. Arrol & Co. engineers and contractors, Glasgow, for £104, 14s. 1d. in name of damages for breach of contract. The defenders were contractors for the erection of the Forth Bridge at Queensferry, and the pursuer averred that they had engaged him for a year from 23d February 1880 at a salary of £150, and an additional commission on the output of bricks, to be manager of their brickwork at Inverkeithing in connection with the said contract. The defenders averred that his engagement was as a weekly servant, at a wage of £3 per week and the said commission. The pursuer worked at the brickwork until 14th August, when the defenders intimated to him that the undertaking had been abandoned, and that his services would no longer be required. He claimed damages for wrongous dismissal, the amount sued for consisting of £75 for the remaining half-year's salary of his alleged term of engagement, and a sum of £29 odd as the estimated amount of commission which would probably have become due and payable to him during that period. Proof was led, from which it appeared that the pursuer's engagement was made at an interview between him and Mr Arrol on 19th February, as to the terms of which the parties were at variance. A letter was produced, written by pursuer to defenders' firm on 20th February in the following terms:—"Referring to my conversation of yesterday with your Mr Wm. Arrol, I hereby offer for twelve months, from Monday 23d current, to take the management of the brickworks started by you at Inverkeithing . . . and that at a salary of £150 . . . payable either monthly or, at your option, shorter periods, with the addition of a premium of 1d. per thousand on the output, payable quarterly. . . . Your acceptance of this per return will oblige your obedient servant, GEORGE TODD." No acceptance was received. During the pursuer's stay at Inverkeithing he received £3 per week from Stewart, the defenders' cashier. The Sheriff-Substitute (LEES), after proof led, found the yearly engagement proved, and decerned in pursuer's favour for £90 of damages. The defenders appealed to the Court of Session, and the Lords affirmed the judgment of the Sheriff-Substitute.

Counsel for Pursuer (Respondent)—Mackintosh—Dundas. Agents — Mackenzie & Black, W.S.

Counsel for Defenders (Appellants) — D.-F. Kinnear, Q.C.—Jameson. Agents—J. & J. Ross, W.S.

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*Tuesday, July* 12.

## SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

### CAMPBELL *v.* CAMPBELL & CO. AND OTHERS.

*Partnership—Change of Name of Firm—Insufficient Interest to Support an Action on the part of a Landlord to Interdict a Firm of Distillers of which he had formerly been a Member from Changing the Name of the Firm during the Currency of the Lease.*

In this case the complainer sought to interdict the respondents, who were tenants of the Tobermory Distillery in the island of Mull, under and in virtue of a lease entered into between him and the firm of N. Campbell & Co. and the then partners thereof for seven years from 1st October 1879, dated 14th and 16th October 1879, from carrying on the business of the said distillery under the name of M'Kill Brothers, or under any other name or firm than that of N. Campbell & Co., during the period of said lease, and also from selling in the market the whisky produced at the said distillery under the name of the "Mull Whisky," or under any other name than that of the Tobermory Distillery Whisky. It appeared that the complainer, who was the heritable proprietor of the Tobermory Distillery, in 1879 entered into a partnership with a certain John M'Kill, the duration of which was to be seven years from 1st October, and the purpose of which was to carry on the distillery business under the name and firm of N. Campbell & Co. In the contract of copartnery it was agreed (1) that M'Kill should manage the business; (2) that the firm of M'Kill Brothers, spirit brokers, Glasgow, should be sole agents for the sale of the whisky produced at the distillery; (3) that the partnership should take a lease from the complainer as an individual for the period of seven years from 1st October 1879 of the whole of the distillery buildings, &c. Accordingly the complainer executed a lease in favour of N. Campbell & Co. and M'Kill, in which there was, *inter alia*, a provision

that the lessor, his heirs and successors, should be bound to take over from the lessees and their foresaids at the end of the lease the entire stock of whisky and casks at a valuation. Thereafter the complainer retired from the business in consequence of his inability to contribute his share of the capital required, and on 1st November 1880 John M'Kill issued a circular to the customers of the distillery, in which he intimated, that as the complainer had retired from the firm of N. Campbell & Co. he proposed to assume his brother Alexander as a partner in the concern, and to carry on the business in the future under the name of M'Kill Brothers, and further, to sell the whisky of the distillery under the new name of "The Mull Whisky." In these circumstances the complainer brought this action, contending (1) that these proceedings would be injurious to his interests. The lease had been granted exclusively in favour of N. Campbell & Co. and the then partners of the firm. There was no right to assign the lease, but only a power to assume partners into the said firm of N. Campbell & Co. It was implied by the lease that the firm should be continued during the currency of the lease. At the end of the lease the complainer was bound to continue the business under the name of N. Campbell & Co., and it would be injurious to the business if the respondents were allowed to change to the name of M'Kill Brothers during the currency of the lease. (2) That it would injure the business of the distillery and the value of it to the complainer at the end of the lease to have the name of the whisky altered and the product of the distillery placed on the market under any other name.

The Lord Ordinary (Rutherfurd Clark) refused the interdict, and the complainer having reclaimed, the Court adhered.

Counsel for Reclaimers — Trayner — Alison. Agent—John Gill, S.S.C.

Counsel for Respondents—D.-F. Kinnear, Q.C. —Mackintosh. Agents—Hamilton, Kinnear, & Beatson, W.S.

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*Tuesday, July* 12.

## SECOND DIVISION.

[Lord Curriehill, Ordinary.

## COLVILLE *v.* MARINDIN.

*Entail — Irritancy — Process — Form of Interlocutor where Reclaimer's Counsel submitted no Argument.*

Where decree for the pursuer had been pronounced by a Lord Ordinary in a declarator of the invalidity of a deed of entail on the ground that one of the cardinal prohibitions was not fenced by any irritant clause, the defender reclaimed with the view of obtaining an Inner House judgment, but no argument was offered in support of the reclaiming note in respect of the authority of previous decisions. The Court pronounced the usual interlocutor—"Having heard counsel, refuse the reclaiming note" —*dub.* Lord Justice-Clerk (Moncreiff), who was of opinion that the words "In respect the counsel for the reclaimer has submitted no argument" should be inserted.

*Observations* (*per* Lord Young) that an Outer House judgment, and even a decree in absence, would be sufficient to give the party in right of the estate a good marketable title.

Eden Colville of Ochiltree and Crombie, in the county of Fife, brought an action to have it declared that three deeds of entail, dated respectively in the years of 1727, 1819, and 1833, under the terms of which he was in possession of the lands of Craigflower and others, were invalid and ineffectual, and that he was therefore entitled to hold them as proprietor in fee-simple.

The three deeds of entail were all conceived in the same terms. In each of them the prohibition against altering the order of succession ran as follows—"And lastly, it is not only hereby expressly provided and declared that it shall not be in the power of myself, or of any of the heirs of tailzie and provision above mentioned to alter or innovate the destination of succession above set down, and that the same shall remain inviolable by me and them in all time coming; but also that it shall not be lawful for myself, or for any of the said heirs of tailzie and provision above mentioned, to possess, bruik, and enjoy the said respective properties hereby conveyed by virtue of any other right and title than this present tailzie, and the charters, sasines, retours, and infeftments following thereupon, and that the said heirs from time to time succeeding as said is, shall cause the whole provisions, conditions, limitations, and clauses irritant and resolutive above mentioned to be inserted and engrossed in their charters, services, retours, precepts, and infeftments: And in case any of the said heirs shall fail or neglect to cause the same to be so inserted and engrossed, or shall contravene any of the clauses, provisions, or conditions aforesaid, then the person so contravening, and all the descendants of his or her body, shall amit, forfeit, and tyne their right of succession, and the same shall immediately devolve upon the next heir in course of succession by this tailzie, sicklike and in the same manner as if the contravener and the descendants of his or her body were naturally dead; and it shall be leisom to the next heir either to serve himself or herself heir to the contravener without being liable for his or her debts, or to serve to the person who stood last vest immediately before the contravener, and to prosecute his or her right by way of adjudication, declarator, or any other way best consistent with the laws of this realm."

The pursuer pleaded that the prohibition against altering the order of succession being fenced by no irritant clause, the deeds were invalid and ineffectual in all respects in terms of section 43 of the Rutherfurd Act (11 and 12 Vict. cap. 36).

The action was defended by Mrs Isabella Colville or Marindin, one of the next heirs of entail under the said deeds.

The Lord Ordinary (Curriehill) found that the deeds of entail libelled were defective as regards the prohibition against alteration of the order of succession, in respect that there was no irritant clause applicable to said prohibition, and the same must be regarded as defective in all the prohibitions; therefore found, decerned, and declared in terms of the summons.